IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JESSICA C. DOMINGO,
Petitioner-Appellant,

v.

DAVID I. CELIS, JR.,
Respondent-Appellee.

Supreme Court No. 2015-SCC-0015-FAM

Superior Court No. FCD-UR 09-0250

OPINION

Cite as: 2016 MP 18

Decided December 28, 2016

Tom J. Schweiger, Saipan, MP, for Petitioner-Appellant.

David I. Celis, Respondent-Appellee, Pro Se.

BEFORE: JOHN A. MANGLONA, Associate Justice; ARTHUR R. BARCINAS, Justice Pro Tem; TIMOTHY H. BELLAS, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Petitioner-Appellant Jessica C. Domingo ("Domingo") appeals the trial court's decision to reduce the amount requested in her motion for an income withholding order. Domingo raises two arguments on appeal: first, that the court erred when it permitted Respondent-Appellee David I. Celis, Jr. ("Celis") to orally oppose the motion without having filed a written opposition; second, that the court impermissibly reduced the withholding amount based on statements by Celis's attorney without supporting testimony or evidence. For the following reasons, we hold that the court did not err in allowing Celis to orally oppose the motion without having filed a written opposition, but VACATE the trial court's order and REMAND for a new hearing on the withholding amount.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 From 1992 to 2000, Domingo and Celis were in a relationship that resulted in the birth of two children. In August 2009, the trial court issued a Decree of Paternity and Order of Support declaring Celis the natural father of Domingo's two minor children and ordering him to pay $300 per month in child support from August 2009 until the time both children reach the age of eighteen or become emancipated.[1] The court also found Celis in arrearage in the amount of $24,900, plus accrued interest.

¶ 3 In April 2015, the court found Celis to be delinquent on the child support and ordered him to pay in arrears in the amount of $12,770, in addition to the previous judgment of $24,900 plus accrued interest. The April 2015 order did not state a monthly amount.

¶ 4 In May 2015, Domingo filed a motion for an income withholding order, asking the court to withhold $350 per month from Celis's paycheck for payment of the child support in arrears. Celis did not file a written opposition to the motion. He was not present at the hearing, but his attorney appeared on his behalf. At the hearing, his attorney asserted that Celis had to support two other minor children with another person, and requested that the court reduce the withholding amount from $350 to $250. Relying on that assertion, the court issued an order withholding $250 per month from Celis's income for the child support past due. Domingo appeals the income withholding order.[2]

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[1] Based on their birthdays in the record, the two children would reach the age of eighteen in 2012 and 2013, respectively.

[2] Celis did not file a response brief and therefore, under NMI Supreme Court Rule 31(c), was not permitted to be heard at oral argument.

II. JURISDICTION

¶ 5 We have jurisdiction over final judgments and orders of the Superior Court. NMI CONST. IV, § 3.

III. DISCUSSION

A. Permission to Orally Oppose Motion

¶ 6 Domingo argues the trial court erred in allowing Celis to orally oppose Domingo's motion without having filed a written opposition. "Family law cases are civil in nature and are governed by the civil rules." *Santos v. Santos*, 2001 MP 12 ¶ 10 (citation omitted). NMI Rule of Civil Procedure 6(d)(2) provides that "[a]ny opposition to [a] written motion [made after the entry of a judgment] shall be filed and served not later than seven calendar days after service of the motion." NMI R. CIV. P. 6(d)(2) ("Rule 6(d)(2)"). A trial court's decision whether to permit oral argument is reviewed for an abuse of discretion. *See Mahon v. Credit Bureau of Placer Cty., Inc.*, 171 F.3d 1197, 1200 (9th Cir. 1999) ("[A] district court may abuse its discretion if it refuses to hear oral argument when a party would suffer unfair prejudice as a result.").

¶ 7 Rule 6(d)(2) does not explicitly state that failure to file a written opposition results in a denial of the right to oral argument. Although Rule 6(d)(2) states "any opposition" to a written motion must be filed and served within a certain timeline, the phrase "any opposition" does not explicitly include oral argument opposing a motion. In fact, the phrase "must be filed and served" in Rule 6(d)(2) suggests that the phrase "any opposition" refers only to written oppositions. When court rules state that failure to file written opposition results in a denial of the right to oral argument, they do so explicitly. For example, NMI Supreme Court Rule 31(c) states: "An appellee who fails to file a brief will not be heard at oral argument unless the Court grants permissions." Even under NMI Supreme Court Rule 31(c), the Court may still permit oral argument when a party fails to file a response brief. However, Rule 6(d)(2) gives no indication a party that does not file a brief is barred from oral argument. "[A] trial court will ordinarily have broad discretion over the conduct of a trial or hearing." *Gullickson v. Kline*, 678 N.W. 2d 138, 142 (N.D. 2004).

¶ 8 Furthermore, some courts relax certain court rules in certain family law situations. *See e.g., Elkins v. Superior Court*, 163 P.3d 160 (Cal. 2007) (recognizing that "some informality and flexibility have been accepted in marital dissolution proceedings"); Mark W. Armstrong, *The New Arizona Rules of Family Law Procedure*, ARIZONA ATTORNEY, Feb. 2006, at 30, 34 (2006) ("The rules of evidence are relaxed in family law cases unless a party timely invokes the formal Rules of Evidence . . . ."). Family law cases often involve issues of high emotional volatility, inexperienced parties, or directly touch on non-parties such as children. These circumstances require some flexibility, including relaxed procedural rules, that would not be appropriate in other situations.

¶ 9 The relaxation of court rules in family law proceedings , however, is not without limit. For example, in *Elkins*, the trial court applied a local court rule

calling for the admission of written declarations instead of direct testimony at a marital dissolution trial. 163 P.3d at 169. The California Supreme Court reversed the trial court's order finding the local court rule inconsistent with the evidentiary hearsay rule. *Id.* The court reasoned that litigants in family law cases "should not be subjected to second-class status or deprived of access to justice" and that "[t]he same judicial resources and safeguards should be committed to a family law trial as are committed to other civil proceedings." *Id.* at 177. Nonetheless, the motion hearing in the instant case was not a trial, so *Elkins*'s concern of maintaining strict procedural standards is less applicable here.

¶ 10 Domingo argues she was impermissibly disadvantaged because she could not prepare to address Celis's oral argument and was subject to a surprise attack. Domingo bears the burden of showing she was impermissibly disadvantaged. *See Frith v. North Dakota Workforce Safety & Ins.*, 845 N.W. 2d 892, 898–99 (N.D. 2014) (finding that when the district court served appellant a response to his motion to expand the record only three minutes before the motion hearing, "there [was] no showing" that the timing of the response prevented the appellant from rebutting the opposing arguments or that it otherwise "prejudiced him in any way"). She has not met her burden. In fact, the record indicates that Domingo was able to refute the arguments offered by Celis at the hearing. For example, when the court expressed its inclination toward reducing the withholding amount to $250 because Celis had to take care of two other minor children, Domingo countered that those two children existed during pendency of the case and should not now make a difference in the determination of the withholding. Domingo does not offer any evidence she could have gathered to further refute Celis's arguments to support her claim of being disadvantaged. Nor she did ask for a continuance to rebut Celis's arguments.

¶ 11 In summary, because the NMI Rules of Civil Procedure do not explicitly prohibit a party from presenting oral arguments when the party has not filed a written opposition, because family law matters call for flexibility of court rules, and because Domingo failed to demonstrate that she was impermissibly disadvantaged, the court did not abuse its discretion in allowing Celis to orally oppose the motion.

B. Attorney's Assertion as Testimony or Evidence

¶ 12 Domingo argues the court impermissibly reduced the withholding amount based on statements by Celis's attorney without supporting testimony or evidence. "We review a trial court's order for child support for abuse of discretion. A judgment will not be disturbed when there is reasonable evidence to support it." *Pille v. Sanders*, 2000 MP 10 ¶ 3 (internal citation omitted). "Although an attorney is an officer of the court and has a duty of candor to the court, the trial court's truth-seeking function is best served when the factfinder relies on evidence introduced under oath." *Inos v. Inos*, 2015 MP 5 ¶ 10 (citations omitted). "[T]his Court has stated that it need not unsettle the rule

that 'arguments and statements made by lawyers are not evidence.'" *Id.* (quoting *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 17).

¶ 13 Here, the factual assertion of Celis's attorney, that Celis had to support two other minor children, was not made under oath, nor was the attorney a witness for Celis. This assertion came solely from the attorney, and thus, was not testimony or evidence. Yet, when Domingo requested the court to justify its decision reducing the withholding amount, the court responded: "Because [Celis]'s got two minor kids to support from someone else, that's why." Hearing at 9:31:15 a.m., *Domingo v. Celis*, Civ No. FCD 09-0250 (NMI Super. Ct. June 29, 2015). This indicates the court reduced the withholding amount based on a fact not in evidence. Accordingly, we conclude the court abused its discretion.

IV. CONCLUSION

¶ 14 For the foregoing reasons, we hold that allowing Celis to oppose the motion without first filing a written opposition does not amount to an abuse of discretion, but VACATE the order setting the amount of income to be withheld and REMAND for a new hearing on this issue based on admissible evidence.

SO ORDERED this 28th day of December, 2016.

/s/
JOHN A. MANGLONA
Associate Justice

/s/
ARTHUR R. BARCINAS
Justice Pro Tem

/s/
TIMOTHY H. BELLAS
Justice Pro Tem